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U.S. Citizenship
and Immigration
Services

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MAY 06 2004

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

Applicant:

APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 210 of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the service center that processed your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Western Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period. This decision was based on adverse information acquired by the Immigration and Naturalization Service or the Service (now, Citizenship and Immigration Services or CIS) regarding the applicant's claim of employment for [REDACTED]

In order to be eligible for temporary resident status as a special agricultural worker, an alien must have engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986, and must be otherwise admissible under section 210(c) of the Act and not ineligible under 8 C.F.R. 210.3(d). 8 C.F.R. § 210.3(a). An applicant has the burden of proving the above by a preponderance of the evidence. 8 C.F.R. § 210.3(b).

On the application, Form I-700, the applicant claimed to have performed 199 man-days of qualifying agricultural employment from April 19, 1985 to October 31, 1985 for [REDACTED] at various farms in Maricopa County, Arizona. In support of the claim, the applicant submitted a corresponding Form I-705 affidavit and an employment verification letter, both allegedly signed by [REDACTED] who is designated as foreman/farm labor contractor.

The applicant also submitted an affidavit from [REDACTED] who represents himself as an alleged co-worker of the applicant for [REDACTED]. The affiant asserted that he and the applicant performed agricultural services for [REDACTED] during the twelve-month period from May 1985 to May 1986. However, the affidavit from [REDACTED] failed to specify the duties performed, type of crops involved, the number of man-days worked, or the exact dates of employment, as required in 8 C.F.R. § 210.3(c)(3). Such an affidavit is of little or no probative or evidentiary value.

In attempting to verify the applicant's claimed employment, the Service acquired information which contradicted the applicant's claim. The Service attempted to contact [REDACTED] at the address he listed on a number of Form I-705 affidavits. This address belonged to [REDACTED] owner of [REDACTED] Farms. [REDACTED] advised the Service that [REDACTED] had been employed on his farm as a full-time foreman beginning in March or April of 1984 until the time of his termination in May of 1988. As such, Mr. [REDACTED] that [REDACTED] had no time to pursue other employment outside of his full-time job at [REDACTED] contrary to [REDACTED] assertions that he was employed at various *other* farms during the qualifying period. [REDACTED] also stated that workers who had worked at his farm during the qualifying period, including those workers who were under the supervision of foreman [REDACTED] approached him ([REDACTED] for evidence of such employment. He further indicated that, for almost 25 years, he had kept extensive payroll records of individuals who worked on his farm.

In his letter, [REDACTED] informed the Service that [REDACTED] resided on his property, and that when [REDACTED] trailer was cleaned [REDACTED] found approximately 50-75 signed, dated, and notarized verification letters with the space designated for the applicant's name left blank. [REDACTED] also stated that it was common knowledge in the area that these letters were for sale.

On August 2, 1989, [REDACTED] was convicted of creating and supplying false writings and documents to be used in applying for temporary residence under the special agricultural worker program, in violation of 8 USC 1160(b)(7)(A)(ii). As part of a plea agreement, [REDACTED] admitted in a signed sworn declaration that he had created and supplied false immigration documents for monetary gain to individuals he knew he had not employed, including signed and notarized letters and Form I-705 affidavits.

On February 6, 1992, the applicant was advised in writing of the adverse information obtained by the Service, and of the Service's intent to deny the application. The applicant was granted thirty days to respond. In his decision, the director stated that the applicant had not replied to the notice of intent to deny, concluded the applicant had not overcome the derogatory evidence and, on March 20, 1992, denied the application. However, the record contains documentation from the applicant's attorney dated March 12, 1992, which does not appear to have been incorporated into the record until after the decision had been rendered. These submissions will be duly considered herein.

In her response to the director's notice of intent, counsel submitted a brief in which she affirms the applicant's original claim and cited the case of *United Farm Workers (AFL-CIO) v. INS*, Civil No. S-87-1064-JFM (E.D. Cal). This case concerns primarily the *type* of documentation that can be used to establish an agricultural laborer's *prima facie* claim to employment. However, the central issue in the present case is not the quantity of the documentation submitted by the applicant but rather its *credibility*. As stated in the regulations, *evidence submitted by an applicant will have its sufficiency judged according to its probative value and credibility*. 8 C.F.R. § 210.3(b)(2). The burden of proof is, therefore, on the applicant until he has submitted documentation which is both credible and amenable to verification.

Counsel also provided an affidavit from the applicant, in which he reasserts his claim to have performed qualifying agricultural services for [REDACTED] indicating that he worked for Mr. [REDACTED] from May 1985 to September 25, 1985 [it is noted that these dates are at variance with those *originally* indicated by the applicant in his I-700 application -- April 19, 1985 to October 31, 1985]. Counsel also submitted the following:

- affidavits from [REDACTED] and [REDACTED] both of whom attest to the applicant having worked for [REDACTED] from May 1985 to September 1985; and
- an affidavit from [REDACTED], attesting to the applicant having resided with the affiant during the period of the applicant's alleged employment for [REDACTED] from May 1985 to September 1985 [the affiant and applicant share the same surname, although the affiant does not indicate he is a relative of the applicant].

The affidavits from [REDACTED] submitted in response to the Notice of Intent to Deny, merely reaffirm the applicant's initial employment claim, but disregard the adverse evidence detailed in the Notice of Intent to Deny. In light of the adverse information acquired by the Service, the affidavits do not constitute independent corroborative evidence sufficient to prove eligibility for status as a special agricultural worker. While 8 C.F.R. § 210.3(c)(3) does indicate that an applicant may establish a claim to eligibility through affidavits submitted under oath by agricultural producers, foremen, farm labor contractors, union officials, fellow employees or other persons with specific knowledge of an applicant's employment, the regulation does not indicate or imply that such evidence shall always be sufficient to overcome adverse information acquired through Service attempts to verify a claim. Moreover, none of the affiants specify the type of crops involved, the duties performed, the number of man-days worked, or the

exact dates of employment, as required in 8 CFR § 210.3(c)(3). Furthermore, as the affiants were not co-workers or supervisors of the applicant, they fail to indicate how they would have had direct, specific knowledge of the applicant's employment [simple acquaintance with the applicant is not sufficient to establish direct, personal knowledge of the applicant's employment]. Without this information, the affidavits submitted in response to the director's notice of intent are of limited value and fail to clarify or resolve the adverse evidence acquired by the Service.

On appeal, counsel for the applicant requests a copy of the applicant's complete legalization file. Counsel's request has been complied with.

The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and amenability to verification. 8 C.F.R. § 210.3(b)(1). Evidence submitted by an applicant will have its sufficiency judged according to its probative value and credibility. 8 C.F.R. § 210.3(b)(2). Personal testimony by an applicant which is not corroborated, in whole or in part, by other credible evidence (including testimony by persons other than the applicant) will not serve to meet an applicant's burden of proof. 8 C.F.R. § 210.3(b)(3).

There is no mandatory type of documentation required with respect to the applicant's burden of proof; however, the documentation must be credible. All documents submitted must have an appearance of reliability, i.e., if the documents appear to have been forged, or otherwise deceitfully created or obtained, the documents are not credible. *United Farm Workers (AFL-CIO) v. INS*, Civil No. S-87-1064-JFM (E.D. Cal.)

The applicant has not rebutted the adverse information by providing evidence from [REDACTED] or any farmer from one of the "various farms" indicated on the employment documents which would suggest the applicant did, in fact, work as claimed at "various farms". Based on the information acquired by the Service, it is concluded that [REDACTED] did not work at any farm other than [REDACTED] during the period in question. Therefore, the applicant could not have worked for [REDACTED] at "various farms" as claimed.

Furthermore, [REDACTED] has stated that his employees, including those who were supervised by M [REDACTED], came to him for documentation of their employment. The applicant has not provided any documents from [REDACTED] although [REDACTED] stated he had extensive records of his employees. In the absence of such documentation, it is further concluded the applicant did not work at Leyton Woolf Farms.

The applicant has failed to establish credibly the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986. Consequently, the applicant is ineligible for adjustment to temporary resident status as a special agricultural worker.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.